




State of Rhode Island and Providence Plantations
DEPARTMENT OF EDUCATION
Shepard Building
255 Westminster Street
Providence, Rhode Island 02903-3400

Enclosure 5c
December 18, 2018

Ken Wagner, Ph.D.
Commissioner

December 18, 2018

TO: Members of the Council on Elementary and Secondary Education

FROM: Ken Wagner, Ph.D., Commissioner 

RE: Regulations Governing Nutritional Requirements for Reimbursable Meals and Competitive Foods and Beverages; Limitations on Competitive Foods and Beverages at Meal Time – Feedback from Public Review and Comment

In compliance with the State requirement that all regulations be re-written, reformatted and codified by December 31, 2018, RIDE has revised the RI Nutrition Requirements 2009, effectively repealing and replacing them with these proposed Regulations Governing Nutritional Requirements for Reimbursable Meals and Competitive Foods and Beverages; Limitations on Competitive Foods and Beverages at Meal Time. Both the repeal and the proposed regulations were promulgated in September 2018 for a 30-day public review and comment period. During the public comment period no objections were received on the repeal of the RI Nutrition Requirements 2009. However, on the proposed regulations, RIDE received a written comment expressing concern that RIDE failed to conduct a cost-analysis of the economic impact of the new proposed regulations on schools and contended that the “whole grain” requirement was a new requirement requiring an increased expenditure of funds by districts and schools. Since the proposed regulation maintains the status quo with respect to State nutrition requirements and limitations on competitive foods, RIDE determined that the proposed regulation does not require “any new expenditure of money or increased expenditure of money by a city, town, or school district”.

As a result of that public comment, RIDE re-noticed the proposed Regulations Governing Nutritional Requirements for Reimbursable Meals and Competitive Food and Beverages; Limitations on Competitive Foods and Beverages at Meal Time, for an additional 30-day public review and comment period, and held another public hearing. RIDE received a total of thirty-five comments during the public review and comment process (please see attached public comment summary report). The majority of the comments favor the proposed regulations, noting that the strong nutrition standards benefit students, especially those most dependent on school meals.

Considering that these state-level nutrition requirements continue to provide significant health and nutrition benefits to students, especially those most dependent on school meals, I urge the Council to adopt the Regulations Governing Nutritional Requirements for Reimbursable Meals and Competitive Food and Beverages; Limitations on Competitive Foods and Beverages at Meal Time, as presented.

Summary of Public Comment on the Regulations Governing Nutritional Requirements for Reimbursable Meals and Competitive Foods and Beverages; Limitations on Competitive Foods and Beverages at Meal Time.

September 26, 2018 & November 19, 2018

Commenter	Comment Type	Section #	Summary of Comments	Change to document or section	Suggested change to language or rationale for no change
Kristen Bussinger, Sr. Director of Partnerships at Revolution Foods	Supports	N/A		None	
	Opposes	N/A	Presented an overview of the services provided at Revolution Foods. References HHFKA and science-based research to support nutrition standards in school meals.	Yes	Repeal state-specific nutrition guidelines and adopt federal nutrition standards.
	Comment	N/A		none	
Chris Haskins, Superintendent at Paul Cuffee	Oppose	N/A	Referenced article 3.5A1 and suggested the use of whole grain rich foods rather than whole grain to better serve the students. He also stated that by creating nutritional guidelines separate from federal guidelines RI is unintentionally creating a barrier for new vendors.	Yes	Revise the proposed regulation to state that all grains served must be whole grain rich with no additional requirement regarding 100% whole grains.
	support	N/A	"Very much in support of the majority" of the guidelines with the exception of the guidelines surrounding whole grains.	None	

Summary of Public Comment on the Regulations Governing Nutritional Requirements for Reimbursable Meals and Competitive Foods and Beverages; Limitations on Competitive Foods and Beverages at Meal Time.

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Allison Chow, Revolution Foods	Oppose	N/A	Provided background on the services provided by Revolution Foods and her role within the company. References participation rates for days with 100% whole grain items vs. days with only whole grain rich items. Suggested RI should adopt only HFFKA Federal guidelines and remove the RI Nutritional Standards for NLSP.	Yes	Repeal state-specific nutrition guidelines and adopt federal nutrition standards.
	support	N/A		None	
Kathleen Swanson, Parent, Foster-Glocester	oppose	N/A		None	
	support	N/A	Opposed to allowing the use of caffeine in schools; supports the language in the proposed regulation, which prohibits caffeine. Feels that the regulations as proposed support the health curriculum already in place in schools. Does not feel that other school issues, such as attendance or profitability, should be addressed at the expense of student health, which would be a 'disservice to students'.	None	

Summary of Public Comment on the Regulations Governing Nutritional Requirements for Reimbursable Meals and Competitive Foods and Beverages; Limitations on Competitive Foods and Beverages at Meal Time.

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Rob Howard, VP of Sales, Revolution Foods	oppose	N/A	Suggested RI should adopt only HFFKA Federal guidelines and remove the RI Nutritional Standards.	Yes	Repeal state-specific nutrition guidelines and adopt federal nutrition standards.
	support	N/A		None	
Karin Wetherill, RIHSC, Community Member	oppose	N/A		None	
	support	N/A	Provided background on the proposed regulation and the distinction between reimbursable meal standards, as referenced by Revolution Foods, and the competitive foods standards referenced by Kathleen Swanson. Has seen the RI-specific regulations successfully implemented and well-received in schools. Fully supports the proposed regulations, as written.	None	
Rosanna Campbell, Mother, Teacher	oppose	N/A		None	

Summary of Public Comment on the Regulations Governing Nutritional Requirements for Reimbursable Meals and Competitive Foods and Beverages; Limitations on Competitive Foods and Beverages at Meal Time.

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	support	N/A	Supports regulation in general. Feels that children cannot perform their best without adequate nutrition. Explained her concern with the current meal choices, questioning how the proposal would meet the nutritional needs of children while also addressing food waste concerns.	None	
Kelly Swanson, Parent	oppose	N/A		None	
	support	N/A	Feels that RI school lunches have made significant positive progress over the years. Has serious concerns over the idea of offering caffeine in schools. Strongly opposes current regulations being rolled back and supports RI Nutritional Regulations as is.	None	
Megan Tucker, American Heart Association	oppose	N/A		None	
	support	N/A	Strongly supports proposed regulations. Spoke about the standards having been developed through a collaborative process with various stakeholders	None	

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			throughout the state over the course of the last decade. Plans to continue work with nutrition partners throughout the state to submit written comment in support of the proposed regulations.		
Bridget Almon, Foster-Glocester Business Manager/Parent	oppose	N/A	Voiced concerns with nutrition programs in schools not being financially viable. Feels that students do not like the current food choices and choose not to participate in school meals as a result. Supports eliminating the RI Nutritional Regulations and adopting only HHKFA Federal Regulations, which she feels will encourage higher participation.	yes	Repeal state-specific nutrition guidelines and adopt federal nutrition standards.
	support	N/A		None	
Paula Paolino	oppose	N/A		None	
	support	N/A	Gave background on SNAP-Ed's role in schools and their role in the collaborative process that was put in place to develop the current nutrition standards, which the proposed regulations	None	

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			support. Strongly opposes any 'roll-back' in the current nutrition standards. Fully supports the proposed regulations, which are based on the dietary guidelines and were arrived at through the support and collaboration of a variety of partners.		
Michael Barnes, Superintendent Foster/Glocester Schools	oppose	N/A	Discussed the burden on school districts when managing state regulations that differ from federal regulation, particularly when seeking the services of outside vendors, such as foodservice management companies, who operate nationally according to federal standards. Feels that wherever possible schools should be held only to federal guidelines and not have additional state guidelines imposed. Supports eliminating the RI Nutritional Regulations and adopting only HHKFA Federal Regulations.	Yes	Repeal state-specific nutrition guidelines and adopt federal nutrition standards.
	support	N/A		None	

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Additional Comments made on November 19, 2018

Commenter	Comment Type	Section #	Summary of Comments	Change to document or section	Suggested change to language or rationale for no change
Karin Wetherill, RIHSC, Community Member	Supports	N/A	Strongly supports the proposed adoption of the school nutrition standards. Discussed the improvements in the quality of food she has seen in the school setting and also the opportunity the standards have given to provide a healthy lifestyle.	None	
	Opposes	N/A		None	
	Comment	N/A		None	
Ellen Cynar, Director of the City of Providence Healthy Communities Office	Oppose	N/A		None	
	Support	N/A	Supports due to the fact that the majority of students are free/reduced eligible and the school meals are a critical source of calorie and nutrition for their day to day food security and may be the only	None	

Summary of Public Comment on the Regulations Governing Nutritional Requirements for Reimbursable Meals and Competitive Foods and Beverages; Limitations on Competitive Foods and Beverages at Meal Time.

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			source of food they are receiving.		
Amy Nunn, Director of RI Public Health Institute, Associate Professor at Brown	Support	N/A	Supports to maintain and continue to pursue more public health oriented regulations that promote healthier eating in our schools. Federal guidelines are insufficient in these regards and RI should be pursuing school lunch policies that go above and beyond the federal standards.	None	
	Oppose	N/A		None	
	Comment	N/A		None	
Eliza Cohen, RI Public Health Institute	Support	N/A	Supports in order to provide high quality food to our students who are in need of nutritious meals. Supports to adopt regulations to maintain strong standards in RI and continue the work of the administration in prioritizing healthy food access through the strategic food plan.		

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	Oppose				

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Commenter	Comment Type	Section #	Summary of Comments	Change to document or section	Suggested change to language or rationale for no change
Dr. Robert Pilkington, Supt. of Village Green Virtual Charter	Supports	N/A		None	
	Opposes	N/A	Opposed specifically to 100% whole grain required. This specific requirement is “over reach” and does not ensure palatability.	Yes	Eliminate 100% whole grain requirement.
Dr. Robert Pilkington, Supt. of Charette Charter School	Opposes	N/A	Opposed specifically to 100% whole grain required. This specific requirement is “over reach” and does not ensure palatability.	Yes	Eliminate 100% whole grain requirement.
	support	N/A		None	
Michael Calise, President of Calise Bakery	Support	N/A	Cites fact that this RI business worked with public schools and major vendors to formulate great lasting bread and rolls that meet these whole grain requirements.	None	

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	Oppose	N/A		None	
Providence PS Robert Gondola, Jr. Chair, Health and Wellness Committee, School Board Ellen Cynar, Director Healthy Communities Office	Support	N/A	Because Providence students rely on school meals PPSPD supports nutrition standards that foster a healthy educational environment and in alignment with health education	None	
	Oppose	N/A		None	
Combined Student Alliance for a Healthier RI of AHA. Kids Count, Farm Fresh RI, RI Community Food Bank, RI Academy of Nutrition & Dietetics, Cancer Action Network, Providence Healthy Communities Office, eat drink RI, Oasis Intl Providence, RI Medical Society, Progresso Latino, RIAHPRD, A Sweet Creation	Support	N/A	The proposed regulation will maintain high nutrition standards for meals, foods, and beverages sold in schools. The existing standards have been implemented for almost a decade and are engrained in school wellness policies. Products have been reformulated to meet the standards long ago. Providing healthy food teaches good habits.	None	

Summary of Public Comment on the Regulations Governing Nutritional Requirements for Reimbursable Meals and Competitive Foods and Beverages; Limitations on Competitive Foods and Beverages at Meal Time.

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	Oppose	N/A		None	
Dr. Allison Tovar, Associate Professor Dept. of Nutrition and Food Sciences URI/ Community Nutrition & Childhood Obesity Prevention Research Group	Support	N/A	Taken with federal requirements the proposed regulation will maintain high nutritious standards for school meals. Schools have been implementing these standards for the better part of a decade and have been written into district wellness plans. Giving children healthy food at school teaches good eating habits. We know that changing the environment is much easier than telling children what to eat and not to eat.	None	
	Oppose	N/A		None	
Jon Anderson, Paul Cuffee School and	Oppose	3.5(A) (1)	Any decision to approve 3.5(A)(1) would be arbitrary, capricious, and contrary to law. Citing for bases in support of objection: First RIDE failed to conduct mandated analysis of the impact on schools. Second, the regulatory analysis of the Proposed Rule does not satisfy the RI APA. Third, the	Yes	Change to document requests taking proposed rule 3.5(A)(1) and refer it back to RIDE for further study

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			Proposed Rule creates barriers to the RI market for food service to the detriment of Paul Cuffee School and its students. Finally, this rule disproportionately affects students at PCS.		
	Support	N/A		None	
Cindy Buxton MS RDN Healthy Schools Healthy Minds	Oppose	N/A	Even with these standards, students are exposed to more added sugar and sodium; and competitive vending machine foods have low nutritional value.	Yes	Strengthen these requirements. (make stricter)
	Support	N/A		None	
Sodexo- Providence	Support	N/A	Strongly supports existing requirements. Obstacles needed to be overcome regarding availability of whole grain products but were overcome by working with local vendors. RI should continue to be a leader by requiring whole grain-rich with half of grains being 100% whole grain.	None	

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	Oppose	N/A		None	
Revolution Foods Kim Doyle, Senior Director of Nutrition and Compliance	oppose	3.5(A)(1)	Applauds many of the requirements put forth including prohibition of artificial sweeteners, sugar alcohols, and caffeine. However, recommend that the grain requirement be modified to be consistent with USDA standards. Cites the fact that the Dietary Guidelines for Americans recommend that half of grains come from whole grains	yes	Suggested change – 3.5(A)(1) to read: “All grain servings in USDA meals must be whole grain-rich.”
	support	N/A		None	
University of RI, SNAP-Ed Team	oppose	N/A		None	
	support	N/A	The 2009 RINR distinguish RI as a national leader in school nutrition. RI has the fifth highest overweight and obese rate for youth aged 10-17 in US. Providing healthiest meals possible is imperative for weight	None	

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			but also likely supports cognitive outcomes. URI-SNAP Ed endorses the continuation of the current RINR		
	oppose	N/A			
Margaret Read, Policy Committee Co-Chair RI Food Policy Council	support	N/A	Opposes any efforts to weaken the updated healthy school meal and snack standards	None	

Additional Written Comments made After October 11, 2018

Commenter	Comment Type	Section #	Summary of Comments	Change to document or section	Suggested change to language or rationale for no change
Michael Calise, President of Calise Bakery	Supports	N/A	Cites fact that this RI business worked with public schools and major vendors to formulate great lasting bread and rolls that meet these whole grain requirements..	None	

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	Opposes	N/A		None	
	Comment	N/A		None	
Cindy Buxton MS RDN Healthy Schools Healthy Minds	Oppose	N/A	Even with these standards, students are exposed to more added sugar and sodium; and competitive vending machine foods have low nutritional value.	None	Strengthen these requirements. (make stricter)
University of RI, SNAP-Ed Team	Support	N/A	The 2009 RINR distinguish RI as a national leader in school nutrition. RI has the fifth highest overweight and obese rate for youth aged 10-17 in US. Providing healthiest meals possible is imperative for weight but also likely supports cognitive outcomes. URI-SNAP Ed endorses the continuation of the current RINR	None	
RI Public Health Institute Amy Nunn, Director of RI Public Health Institute, Associate Professor at Brown	Support	N/A	The proposed regulation which would maintain high standards for school meals is an important measure to ensure healthy food for our children and preventing dietary disease Since so many low income children depend on school meals for their nutrition, maintaining high quality nutritious food is essential for the children who need it most. Notes that the Governor's	None	

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			Strategic Food Plan recognizes school meals as a vital piece of food security and emphasizes that RI leads the nation in nutrition requirements.		
	Oppose	N/A		None	
	Comment	N/A		None	
Providence PS Robert Gondola, Jr. Chair, Health and Wellness Committee, School Board Ellen Cynar, Director Healthy Communities Office	Support	N/A	Because Providence students rely on school meals PPSPD supports nutrition standards that foster a healthy educational environment and in alignment with health education	None	
	Oppose	N/A		None	
Dr. Allison Tovar, Associate Professor Dept. of Nutrition and Food Sciences URI/ Community Nutrition & Childhood Obesity Prevention Research Group	Support	N/A	Taken with federal requirements the proposed regulation will maintain high nutritious standards for school meals. Schools have been implementing these standards for the better part of a decade and have been written into district wellness plans. Giving	None	

Summary of Public Comment on the Regulations Governing Nutritional Requirements for Reimbursable Meals and Competitive Foods and Beverages; Limitations on Competitive Foods and Beverages at Meal Time.

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			children healthy food at school teaches good eating habits. We know that changing the environment is much easier than telling children what to eat and not to eat.		
Combined Student Alliance for a Healthier RI of AHA. Kids Count, Farm Fresh RI, RI Community Food Bank, RI Academy of Nutrition & Dietetics, Cancer Action Network, Providence Healthy Communities Office, eat drink RI, Oasis Intl Providence, RI Medical Society, Progresso Latino, RIAHPERD, A Sweet Creation	Support	N/A	The proposed regulation will maintain high nutrition standards for meals, foods, and beverages sold in schools. The existing standards have been implemented for almost a decade and are engrained in school wellness policies. Products have been reformulated to meet the standards long ago. Providing healthy food teaches good habits.	None	

TITLE 200 – BOARD OF EDUCATION

CHAPTER 20 – COUNCIL ON ELEMENTARY AND SECONDARY EDUCATION

SUBCHAPTER 25 – STUDENT HEALTH AND SAFETY

PART 4 – Regulations Governing Nutritional Requirements for Reimbursable Meals and Competitive Foods and Beverages; Limitations on Competitive Foods and Beverages at Meal Time

4.1 Authority

- A. This part is promulgated pursuant to R.I. Gen. Laws §§ 16-8-9, 16-8-10, 16-8-10.1, 16-21-7(c) and further authorized under 7 C.F.R. §§ 210.11(b) and 210.19(e).
- B. The provisions of this Part will be monitored and enforced by RIDE during the USDA Administrative Review Process set forth in 7 C.F.R. § 210.18.

4.2 Purpose

The purpose of this Part is to maintain high nutrition standards for school meals that are reimbursed by the United States Department of Agriculture and all other food and beverages that are sold on the school campus in Rhode Island. USDA nutritional standards set minimum requirements and states operating the National School Lunch and School Breakfast Programs are permitted to establish more rigorous nutrition requirements or additional requirements for school meals and competitive foods that are not inconsistent with the provisions of USDA rules. The additional nutritional requirements and additional limitations on sales of competitive foods and beverages set forth in this Part will enhance school meals and the school nutrition environment in Rhode Island's schools.

4.3 Definitions

- A. For the purposes of these Rules and Regulations, the following terms shall have the following meaning:
 - 1. "Competitive foods" means all foods and beverages, other than meals reimbursed under the National School Lunch Act (42 U.S.C. § 1751 et seq.) and Child Nutrition Act of 1966 (42 U.S.C. § 1771 et seq.) available for sale to students on the school campus during the school day.
 - 2. "Reimbursable meal" means a meal (breakfast, lunch or afterschool snack) which meets all of USDA's meal requirements for reimbursement

under the National School Lunch Act (42 U.S.C. § 1751 et seq.) and the Child Nutrition Act of 1966 (42 U.S.C. § 1771 et seq.).

3. “School campus” means all areas of the property under the jurisdiction of the school that are accessible to students during the school day.
4. “School day” means the period from midnight before, to sixty (60) minutes after, the end of the official school day.

4.4 Incorporated Materials

These regulations hereby adopt and incorporate 7 C.F.R. §§ 210.10, 210.11, 210.18, 210.19 and 220.8 (2018) by reference, not including any further editions or amendments thereof and only to the extent that the provisions therein are not inconsistent with these regulations.

4.5 State Specific Requirements

- A. In addition to the minimum meal requirements for all reimbursable meals set forth in federal regulation (lunches and afterschool snacks established in 7 C.F.R. § 210.10 and school breakfasts established in 7 C.F.R. § 220.8) all reimbursable meals must meet the following additional requirements:

1. On a weekly basis, at least one-half (1/2) of the “grain servings” in USDA meals must be one hundred (100%) per cent whole grain and the remaining “grain servings” must be whole grain rich.
2. In all menu-planning options, schools will offer each day, at a minimum, two (2) different fruits and/or vegetables at breakfast; three (3) different fruits and/or vegetables at lunch.
3. No more than one (1) serving of one hundred (100%) percent juice may be offered per day. Juice may be offered at breakfast or at lunch each day, but not at both meals.
4. No more than two (2) servings of one hundred (100%) percent juice may be offered each week as part of an afterschool snack.
5. Artificial sweeteners and sugar alcohols are prohibited.
6. Caffeine, except naturally-occurring trace amounts, is prohibited.

- B. In addition to the minimum requirements for competitive foods and limitations on service of competitive foods established in 7 C.F.R. § 210.11 and R.I. Gen. Laws § 16-21-7, all competitive foods must meet the following additional requirements:

1. Artificial sweeteners and sugar alcohols are prohibited.

2. Added sweeteners are prohibited in beverages. This includes but is not limited to high fructose corn syrup, white sugar, brown sugar, corn syrup, dextrose, raw sugar, malt syrup, fructose sweetener, honey, molasses and fruit juice concentrate. This provision does not apply to flavored non-fat milk or USDA commodities served as part of a reimbursable meal.
3. Caffeine, except naturally-occurring trace amounts, is prohibited.

C In addition to the limitations on service of competitive foods established in 7 C.F.R. § 210.11, competitive foods offered at mealtimes in elementary schools are limited to the following:

1. The entrée that is included in that day's reimbursable meal;
2. The same entrée when served the next school day;
3. Whole or cut fresh fruits;
4. Whole or cut fresh vegetables (may include low-fat dressing or hummus);
5. Yogurt (may be layered with fruit)
6. Water – any size of plain water (with or without carbonation)
7. Fluid Milk – up to eight (8) ounce portions limited to:
 - a. Unflavored low-fat milk (1% fat) or
 - b. Unflavored or flavored fat free milk, or
 - c. Milk alternatives permitted by USDA National School Lunch Program